the rule and the limitation: There is a presumption that a communication purporting to come from a local railroad freight office, relating to loss or injury incurred by owners of freight shipped to the station where the office is located, are made by authorized agents; but there would be no presumption that a telephone communication purporting to come from such a local freight office, relating to the general management of the road, was authorized by the railroad company. It was further said in this case obiter that the identification of the person's voice, responding as agent to a telephone call at another's place of business, is unnecessary to the admissibility of his statements in evidence as prima facie those of one having authority to speak, disapproving Young *v.* Seattle Transfer Co., 33 Wash. 225, 74 Pac. 375, 63 L. R. A. 988, 99 Am. St. Rep. 947; Planters' Cotton Oil Co. *v.* Western Union Telephone Co., 126 Ga. 621, 55 S. E. 495, 6 L. R. A. (N. S.) 1180.

As this interesting question of evidence, of growing importance, has never yet been answered by our supreme court, we have endeavored to keep the decisions down to date so that our readers may have the benefit of them. See article on Telephonic Communications in Evidence, 13 Va. Law Reg. 665. And see 14 Va. Law Reg., pp. 70, 566, 808.

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**Physical Examination of Plaintiff in Personal Injury Cases.**—It was held by the supreme court of South Carolina in Best *v.* Columbia Electric Street Railway & Power Co., 67 S. E. 1, that the court has no power to require a plaintiff suing for personal injuries to submit to a physical examination by the defendant's physicians, or by physicians appointed by the court, for the purpose of ascertaining the true nature and extent of the injury. But there was a strong dissent in this case by Judge Woods in which he cites most of the cases, and severely criticises a similar holding by the supreme court of the United State in Union Pacific R. Co. *v.* Botsford, 141 U. S. 250; and he shows why this decision should not be followed by the state courts. The Chief Justice gave a "grumbling assent" feeling that he was bound by a precedent, but saying that he was prepared to vote to overrule that case. This is a point that has never come up for decision in Virginia, and we hope that our court will depart from their well-known tendency toward the minority ruling, especially on questions of evidence. Nothing can be more helpful to the jury in reaching a just estimate of the damages than a knowledge of the true nature of the injury. To deny to either party any reasonable means of making the extent of the injury evident is unfair, for often its nature is such that the defendant has no means whatever of protecting himself from pretensive or exaggerated claims, except on examination by impartial experts under the order of the court. For

these reasons, whenever it appears to the trial judge that a physical examination by disinterested experts would materially aid the jury in arriving at a just verdict, such examination should be ordered.

So far as the books show, no order to inspect the body of a party in a personal action appears to have been made or even moved for in any English courts of common law at any period of their history. 16 Ency. of Law, 2d Ed., p. 811, citing Union Pac. R. Co. *v.* Botsford, 141 U. S. 253.

In the United States the decisions are very conflicting on the question whether a court has the power to compel the suitor in an action for personal injuries to submit his person to an examination and inspection at the instance of the opposite party where there is no statute expressly authorizing this practice, and decisions even in the same states are not always harmonious. In the federal courts it is well settled that a court has no power at any time or under any circumstances to compel a plaintiff in an action for personal injuries to submit his person to a physical examination; and the same rule has been laid down in some of the state courts. 16 Ency. of Law, 2d. Ed., p. 811, citing cases from Delaware, Illinois, Indiana, New York and Texas to support the text.

But the decided weight of authority is against the foregoing rule. In a number of decisions it is held that in an action to recover for personal injuries the court has power to require the plaintiff to submit to examination by physicians or surgeons for the purpose of ascertaining the nature, extent, and permanency of the injuries for which a recovery is sought, and that the examination should be ordered and had under the direction and control of the court whenever it fairly appears that the ends of justice require the disclosure or more certain ascertainment of facts which can be brought to light or fully elucidated only by such an examination, and that the examination may be made without danger to the plaintiff's life or health, and without the infliction of serious pain. In support of this view it has been urged that when a person appeals to the sovereign for justice he impliedly consents to the doing of justice to the other party and impliedly agrees in advance to make any disclosure which is necessary in order that justice may be done; that a party to an action has the right to demand the administration of exact justice, and to this end that evidence essential thereto and within the control of the court shall be produced; that it is within the power of the court to compel an examination, since the plaintiff is before it as a witness; that if the plaintiff can exhibit his injuries to the jury for the purpose of determining their nature and extent (which it is well settled he can do), he should, in a proper case and under proper circumstances, be required to do the same thing for a like purpose upon the request of the other party. It has also been said that the right to a physical examination of the plaintiff upon the defendant's re-

quest rests upon the analogy which the proceeding bears to the discovery of books and papers. 16 Ency. of Law, 2d Ed., p. 812, citing cases from Alabama, Arkansas, Georgia, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri,, Nebraska, Ohio, Pennsylvania, Washington, and Wisconsin, as jurisdictions in which this more liberal rule has been adopted.

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**Compelling Production of Voluminous Books and Papers.**—It is always gratifying to note the modern tendency towards greater liberality in rulings upon the admissibility of evidence. In accordance with this liberal tendency it held by the supreme court of North Carolina in Washington Horse Exchange *v.* Wilson & McCoy, 67 S. E. 35, following Supreme Court of the United States, that when it is necessary to prove the results of voluminous facts, or of the examination of many books and papers, such as books of a nonresident bank, and the examination cannot be conveniently made in court, or such books and papers cannot be introduced without stopping the business of the party called on to produce the same, the results may be proved by the person who made the examination thereof.

Where the production of the best evidence is highly inconvenient or physically impossible, as in the case of inscriptions on walls and fixed tables, mural monuments, gravestones, surveyors' marks on boundary trees, and the like, may be proved by secondary evidence. 25 Ency. of Law, 2d Ed., p. 174; Mortimer *v.* M'Callan, 6 M. & W. 58; Sayer *v.* Glossop, 2 Exch. 409; Bruce *v.* Nicolopulo, 11 Exch. 129; Jones *v.* Tarleton, 9 M. & W. 675; Rex *v.* Fursey, 6 C. & P. 84, 25 E. C. L. 294; Doe *v.* Cole, 6 C. & P. 360, 25 E. C. L. 438; Shrewsbury *v.* Peerage, 7 H. L. Cas. 1; Bartholomew *v.* Stephens, 8 C. & P. 728, 34 S. C. L. 605; North Brookfield *v.* Warren, 16 Gray (Mass.) 171; State *v.* Credle, 91 N. Car. 640. See also, Stearns *v.* Doe, 12 Gray (Mass.) 482, 74 Am. Dec. 608; Kansas Pac. R. Co. *v.* Miller, 2 Colo. 442.

Where, however, the document is merely a notice not permanently affixed but portable, it should be produced. 25 Ency. of Law, 2d Ed., p. 174; Jones *v.* Tarlton, 9 M. & W. 675.

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**Rights of Beneficiaries Who Murder the Insured.**—While it is a principle very generally accepted that a beneficiary who has caused or procured the death of the insured under circumstances amounting to a felony will be allowed no recovery on a policy, still this will not relieve the company of all liability on the policy, but recovery can be had usually by the representative of the insured, and for the benefit of the latter's estate. Anderson *v.* Life Ins. Co. of Virginia (N. C.), 67 S. E. 53.